

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

CHRISTO LASSITER,

Appellant,

Case No. 3:09-cv-190

Judge Thomas M. Rose

-v-

DEVON LORAIN GROVE-MERRITT,

Appellee.

**ENTRY AND ORDER OVERRULING LASSITER'S MOTION FOR
RECONSIDERATION (Doc. #10)**

The Court previously dismissed Plaintiff Christo Lassiter's ("Lassiter's") Appeal from an adversary proceeding (Case No. 3:07-ap-03215) conducted in the U.S. Bankruptcy Court for the Southern District of Ohio. Lassiter's Appeal was filed two days after the appeal period had expired.

The Bankruptcy Court determined, following a hearing on the matter, that Lassiter's Appeal was untimely pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 8002(a) and that Lassiter had not established excusable neglect pursuant to FRBP 8002(c). However, the Bankruptcy Court declined to address a motion to dismiss filed by Defendant Devon Loraine Grove-Merritt ("Grove-Merritt") in the adversary proceeding because Lassiter had already filed a Notice of Appeal. Lassiter's Appeal was made to this Court.

Grove-Merritt then filed a Motion To Dismiss in this Court which this Court granted because Lassiter's appeal was not made within the 10-day time requirement. Further, following a hearing and argument, the Bankruptcy Court had already determined that Lassiter did not establish excusable neglect.

Lassiter now asks this Court to reconsider its Entry and Order dismissing his appeal because, according to Lassiter, his Appeal was filed “only” one-minute late. According to Lassiter, “under ECF rules, filing anytime after a due date, but before the next business day for the court, makes a filing one minute late.” However, Lassiter does not refer the Court to such an ECF rule nor is the Court able to find such a rule in the Southern District of Ohio’s Electronic Filing Policies and Procedures Manual for Civil Cases.

Lassiter also takes issue with the Court’s finding that he did not respond to Grove-Merritt’s Motion To Dismiss. Another review of the docket in this matter does not reveal a response filed by Lassiter to the Motion To Dismiss.

Lassiter apparently tucked his response away in his Appellate Brief, which of course, is not the proper way to respond to an outstanding motion. Even if they were to be considered, however, Lassiter’s arguments therein regarding timeliness of his Appeal are without merit.

Since Lassiter’s Notice of Appeal was admittedly filed late and he has not established excusable neglect, this Court does not have jurisdiction over Lassiter’s Appeal. Lassiter’s Motion for Reconsideration (Doc. #10) is **OVERRULED**.

DONE and ORDERED in Dayton, Ohio this Twenty-Seventh day of July, 2009.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

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